

§ 400.131 Request for a hearing and result if an employee fails to meet deadlines.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for hearing that is received by the FCIC Official not later than 30 calendar days from the date of the notice of intent to collect a debt by salary offset, if the employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The FCIC Official's proposed offset schedule, including the percentage of deduction.

(b) The petition must be signed by the employee and should clearly identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support the his or her position. If the employee objects to the percentage of disposable salary to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 days provided in paragraph (a) of this section, the FCIC Official may accept the petition if the employee is able to show that the delay caused by conditions beyond his or her control, or because the employee failed to receive the notice of the filing deadline (unless the employee has actual notice of the deadline).

(d) An employee will not be granted a hearing and will have his or her disposable salary offset in accordance with the FCIC Official's announced schedule if the employee:

(1) Fails to file a petition for hearing as set forth in this subsection; or

(2) Is scheduled to appear and fails to appear at the hearing.

[53 FR 4, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.132 Hearings.

(a) If an employee timely files a petition for a hearing, the FCIC Official will select the date, time, and location for the hearing.

(b) The hearing shall be conducted by an appropriately designated Hearing Official.

(c) Rules of evidence shall not be observed, but the hearing officer will con-

sider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing, and weigh all such evidence accordingly, given all the facts and circumstances surrounding the debt.

(d) The burden of proof with respect to the existence of the debt rests with FCIC.

(e) The employee requesting the hearing shall bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists, or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.133 Written decision following a hearing.

(a) At the conclusion of the hearing, a written decision will be provided which will include:

(1) A statement of the facts presented at the hearing supporting the nature and origin of the alleged debt and those presented to refute the debt;

(2) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(3) The amount and validity of the alleged debt determined as a result of the hearing;

(4) The payment schedule (including the percentage of disposable salary), if applicable; and

(5) The determination of the amount of the debt at this hearing is the final agency action on this matter.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.134 Review of FCIC record related to the debt.

An employee who intends to inspect or copy FCIC records related to the debt must send a letter to the FCIC official (designated in the notice of intent) stating his or her intentions. The letter must be received by the FCIC official within 30 calendar days of the date of the notice of intent. In response to the timely notice submitted by the debtor, the FCIC official will notify the employee of the location and time

when the employee may inspect and copy FCIC records related to the debt.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.135 Written agreement to repay debt as an alternative to salary offset.

The employee may propose, in response to a notice of intent, a written agreement to repay the debt as an alternative to salary offset. The proposed written agreement to repay the debt must be received by the FCIC official within 30 calendar days of the date of the notice of intent. The FCIC official will notify the employee whether the employee's proposed written agreement for repayment is acceptable. The FCIC official may accept a repayment agreement instead of proceeding by offset. In making this determination, the FCIC official will balance the FCIC interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the FCIC official will accept a repayment agreement, instead of offset, for good cause such as, if the employee establishes that offset would result in undue financial hardship, or would be against equity and good conscience.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.136 Procedures for salary offset; when deductions may begin.

(a) Deductions to liquidate an employee's debt will be made by the method and in the amount outlined in the Notice of Intent to collect from the employee's salary, as provided for in § 400.130.

(b) If the employee files a petition for a hearing before the expiration of the period provided for in § 400.130, then deductions will begin after the hearing officer has provided the employee with a final written decision in favor of FCIC.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected in

accordance with procedures for administrative offset.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.137 Procedures for salary offset; types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the disposable pay for an ordinary pay period. In these cases, deduction will be by installments as set forth in § 400.138.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.138 Procedures for salary offset; methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the hearing official agree to alternative arrangements for repayment under § 400.135.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of the installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than \$25.00 per pay period, or \$50.00 per month, will be accepted only in the most unusual circumstances.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.139 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under the provisions of 5 U.S.C. 5514.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]